

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/826,293
Applicant : Nir Hadar
Filed : 19 APR 2004
TC/A.U. : 3727
Examiner : Louis K. Huynh

Docket No. : 620/30

Commissioner of Patents and Trademarks
Washington, D.C. 20231
ATTENTION: Board of Patent Appeals and Interferences

APPELLANT'S BRIEF

Sir:

This is in furtherance of the Notice of Appeal filed in this case on November 6, 2006. The fees required under § 1.17(c) and any required petition for extension of time for filing this brief and fees therefor are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

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I. REAL PARTY IN INTEREST

The real party of interest in this application is the assignee of record – Polymer Logistics B.V., having a place of business at V. Konijnenburgweg 99a, 4612 PL Bergen op Zoom

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

The claims under appeal are claims 14-18 and 21-27.

The status of the claims in this application is as follows:

- Claims 14-18 and 24-27 are rejected.
- Claims 21-23 have been withdrawn as the result of a restriction of species and are to be reinstated when generic claim 14 is found to be allowable.
- Claims 1-13, 19 and 20 have been canceled

IV. STATUS OF AMENDMENTS

No amendments were filed subsequent to the final rejection mailed 2 May 2006.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention defined by independent **claim 14** under appeal is a method for using a knock-down crate to transport produce from a loading location to an unloading location (*page 15, lines 9-18*), the method comprising the steps of: (a) providing a knock-down crate having: (i) a base having a length, a breadth, and an upper surface (*page 8, lines 10-17*) that includes an elongated recess (*page 8, lines 12-20*), said base including a pair of elongated channels extending parallel to said length (*page 11, lines 19-22*) such that a

major part of said recess lies between said elongated channels (*page 11, line 23-page 12, lines 10*), each of said channels having at least one open end for receiving tines of a forklift mechanism (*page 11, lines 21-22*), and (ii) four sides deployable in a crate configuration wherein a plurality of said sides are engaged with said base and each other to form a four-sided crate (*page 8 lines 15-20*), said four sides being further deployable in a knock-down configuration wherein said four sides are received substantially within said elongated recess (*page 8,lines 20-23, page 9, lines 5-8 and FIG 3*); (b) deploying said crate in said crate configuration (*page 15, lines 9*); (c) loading said crate at the loading location with produce (*page 15, line 10*), at least part of the produce lying within said elongated recess (*page 15, lines 11-13 and FIG 11*); (d) transporting the produce in said crate to the unloading location (*page 15, lines 13-14*); (e) unloading the produce from said crate (*page 15, lines 14*); and (f) deploying said crate in said knock-down configuration with said plurality of sides located substantially within said elongated recess for transport to a next loading location (*page 15, lines 14-18 and FIG 12*)

The invention defined by independent **claim 27** under appeal is a method for using a knock-down crate to transport produce from a loading location to an unloading location (*page 15, lines 9-18*), the method comprising the steps of: (a) providing a knock-down crate having: (i) a base having a length, a breadth, and an upper surface (*page 8, lines 10-17*) that includes an elongated recess (*page 8, lines 12-20*), said base including a pair of forklift tine engagement regions extending parallel to said length such that a major part of said recess lies between said forklift tine engagement regions, each of said forklift tine engagement regions configured for receiving tines of a forklift mechanism (*page 11, lines 19-21*), and (ii) four sides deployable in a crate configuration wherein a plurality of said sides are engaged with said base and each other to form a four-sided crate (*page 8, lines 15-20*), said four sides being further deployable in a knock-down configuration wherein said four sides are received substantially within said elongated recess (*page 8, lines 20-23*,

page 9, lines 5-8 and FIG. 3); (b) deploying said crate in said crate configuration (page 15, line 9); (c) loading said crate at the loading location with produce (page 15, line 10), at least part of the produce lying within said elongated recess (page 15, lines 11-13 and FIG. 11); (d) transporting the produce in said crate to the unloading location (page 15, lines 13-14); (e) unloading the produce from said crate (page 15, line 14); and (f) deploying said crate in said knock-down configuration with said plurality of sides located substantially within said elongated recess for transport to a next loading location (page 15, line 14-18 and Fig. 12).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection presented for review are as follows:

1. Whether claims 14-18 and 24-27 are unpatentable over Luburic (US5,938,059) and Foy et al. (US 4,917,255) under 35 U.S.C. 103(a).

VII. ARGUMENTS

REJECTIONS UNDER 35 U.S.C. 103(a)

Rejection 1

The Examiner has rejected claims 14-18 and 24-27 under 35 U.S.C. 103(a) as being unpatentable over Luburic (US5,938,059) and Foy et al. (US 4,917,255)

In the Office Action of 2 May 2006, the Examiner finally rejected claims 14-18 and 24-27 under 35 U.S.C. 103(a) as being unpatentable over Luburic (US5,938,059) and Foy et al. (US 4,917,255)

In rejecting both independent claims 14 and 27, the Examiner has stated that, “...Foy's... four openings (44) defining a pair of elongated channels for receiving tines of a forklift mechanism; wherein the upper surface and the base sides (14) define a central recess of the container, and the majority of the recess lies between the outermost distance of the pair of elongated channels . .” (emphasis added)

In order for the recess of Foy to lie between the outermost distance of the pair of elongated channels, the recess must extend over the elongated channels. That is to say, at least a portion of Foy's recess overlies the elongated channels

In the Advisory Action dated 13 November 2006, the Examiner stated that “between also means ‘in common to’, which reads on the claimed limitation of ‘a major part of the recess lies between said elongated channels’.”

In applying the definition of “in common to”, the Examiner is inferring that claims 14 and 27 of the instant application can be read to mean that the recess lies between the elongated channels such that a portion of the recess extends either into the space occupied by the elongated channels or overlies the elongated channels.

Group 1 – Claim 27

By way of introduction, it is important to note that the Examiner has clearly failed to find any prior art which teaches the inventive concept to which the claims are drawn. Specifically, none of the art of record teaches a method of employing a crate in which sides of the knock-down crate are stored within a recess located in major part interposed between tine-receiving channels of the base of the crate, thereby providing a particularly compact and volume-efficient knock-down configuration. The issues in question in this appeal are therefore primarily linguistic issues, and specifically, whether the claim language of “between said forklift tine engagement regions” is sufficient to define the aforementioned patentable feature.

In the Response to Final Rejection filed November 6, 2006, the Applicant cited two dictionary definitions of the word “between”. These citations are reproduced in full in the Appendix of Evidence attached herewith.

In the Examiner’s Advisory Action, he gives an alternative definition of “between” as “in common to”. Although the Examiner did not explicitly cite his source, he appears to be referring to a definition such as that listed as “1 b” in the “Merriam-Webster’s Online Dictionary” (www.m-w.com) cited by the Applicant which defines “between” as “in common to”. The Appellant notes, however, that the alternative meaning suggested by the Examiner is not normal usage for describing spatial interrelation, but rather for abstract relationships. Thus, the example given by the dictionary for this sense of the word “between” is “divided *between* his four grandchildren.” (see Appendix of Evidence) This example for the usage of the word “between” does not lend itself to a spatial meaning as is necessitated by the context of the term in the application. Appellant asserts that it is incorrect to apply this non-spatial meaning of the word “between” in order to interpret the claimed limitation of “a major part of the recess lies between said forklift tine engagement regions” in a sense clearly abhorrent to the normal usage of the terminology. The usage of

the word "between" employed by the Examiner to justify his rejections is also clearly at odds with the clear meaning of the term as used in the specification, where the recess is shown in all cases to be "between", i.e., interposed between, the tine channels.

Instead, Appellant maintains, as stated in the Response After Final Rejection filed November 6, 2006, that the proper definition of the word "between," as used in the instant application is that listed in "Merriam-Webster's Online Dictionary" (www.m-w.com) as:

2 a : in the time, space, or interval that separates.. (emphasis added);

and in The Cambridge Dictionary of American English, as listed on their Website (<http://dictionary.cambridge.org>), which expands the definition slightly:

in or into the space that separates two places, people, or objects (emphasis added)

Example: *She squeezed in between the parked cars.* (emphasis added) (see Appendix of Evidence)

Appellant further maintains that these definitions are consistent with the word "between" as it is used in the specification of the instant application. This is illustrated in the Figures and by the following quote from page 11, line 18 - page 12, line 10,

"... Crate 10 is preferably configured for handling by standard pallet handling equipment. To this end, base 12 preferably has a pair of elongated channels 26 extending parallel to length L for receiving tines of a forklift mechanism (forklift, pallet carrier etc.) Channels 26 typically extend along the entirety of length L, allowing insertion of tines from either end of the crate. Most preferably, at least a major portion of recess 20 is located between channels 26. Thus, considered from a different point of view, crate 10 may be considered to have a thin base 12 in the region of recess 20, with locally raised regions to provide the volume required for channels 26. It will thus be understood that the usable volume of the inside of the crate is fully maximized by making all volume other than that required for channels 26 available for loading with produce. Furthermore, since the sides are stored between the regions of base 12 containing channels 26, nothing overlies the regions of the base 12 containing channels 26 in the collapsed state, making the height of the crate in its collapsed state significantly less than that of "fold-down" crates of similar dimensions..." (emphasis added)

Once a correct reading of the term "between" has been established, the Appellant submits that the invention as claimed is clearly non-obvious over the art of record. Specifically, neither Luburic nor Foy et al. teaches or in any way suggests a crate structure or corresponding method of use in which sides of the knock-down crate are stored within a recess located in major part between forklift tine engagement regions. The Applicant therefore respectfully submits that the Examiner's rejection of claim 27 under § 103(a) is improper and should be reversed by the Board of Patent Appeals and Interferences.

Group II – Claims 14-18 and 24-26

The arguments submitted above with regard to claim 27 apply equally in relation to independent claim 14 and its dependent claims. The Appellant respectfully submits that these arguments are fully persuasive.

The Appellant requests separate consideration of these claims lest the Board of Patent Appeals and Interferences find the terminology of "elongated channels" to have significantly different scope from the "forklift tine engagement regions" of claim 27.

On the basis of the above-detailed arguments, Appellant submits that the Examiner's § 103(a) rejections of this group of claims are improper and respectfully requests that these rejections be overturned by the Board of Patent Appeals and Interferences

Respectfully submitted,

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Attorney for Appellant
Registration No. 33,883

Date: February 6, 2007

VIII. APPENDIX - COPY OF CLAIMS UNDER APPEAL

14 A method for using a knock-down crate to transport produce from a loading location to an unloading location, the method comprising the steps of:

(a) providing a knock-down crate having:

(i) a base having a length, a breadth, and an upper surface that includes an elongated recess, said base including a pair of elongated channels extending parallel to said length such that a major part of said recess lies between said elongated channels, each of said channels having at least one open end for receiving tines of a forklift mechanism, and

(ii) four sides deployable in a crate configuration wherein a plurality of said sides are engaged with said base and each other to form a four-sided crate, said four sides being further deployable in a knock-down configuration wherein said four sides are received substantially within said elongated recess;

(b) deploying said crate in said crate configuration;

(c) loading said crate at the loading location with produce, at least part of the produce lying within said elongated recess;

(d) transporting the produce in said crate to the unloading location;

(e) unloading the produce from said crate; and

(f) deploying said crate in said knock-down configuration with said plurality of sides located substantially within said elongated recess for transport to a next loading location

15. The method of claim 14, wherein upper and lower edges of said sides and upper and lower peripheral regions of said base are formed with complementary alignment projections and recesses, the method further comprising:

(a) stacking said crate when in said crate configuration with other similar crates such that said alignment projections and recesses on said upper edges of said sides and on said lower peripheral region of said base serve to align said crate with the other similar crates placed above and below said crate; and

(b) stacking said crate when in said knock-down configuration with other similar crates such that said alignment projections and recesses on said upper and lower peripheral regions of said base serve to align said crate with the other similar crates placed above and below said crate

16. The method of claim 14, wherein said length is implemented so as to be substantially equal to said breadth.

17. The method of claim 16, wherein said four sides are implemented so as to be interchangeable

18. The method of claim 14, wherein said base and said four sides are all formed primarily from molded plastic material

21. The method of claim 14, wherein said elongated recess is implemented as an open-ended recess extending the entirety of said length.

22. The method of claim 21, wherein said four sides are implemented as a first pair of sides deployable parallel to said length and a second pair of sides deployable parallel to said breadth, and at least said second pair of sides are each implemented with a downwardly projecting tab configured to substantially close an end of said open-ended recess when said side is engaged with said base.

23. The method of claim 22, said first pair of sides and said second pair of sides are implemented so as to be interchangeable, said base including a pair of slots extending parallel to said length and configured for receiving said downwardly projecting tab of said first pair of sides.

24. The method of claim 14, wherein said elongated recess is implemented as a closed-ended recess terminating at two end walls.

25. The method of claim 24, wherein each side of said four sides is implemented with a length no greater than a length of said closed-ended recess.

26. The method of claim 14, wherein each side of said four sides is implemented with attachment features for attachment to two adjacent sides, and wherein said attachment features are further configured such that each pair of said sides are doubly-interlockable to form a unit with said pair of sides associated in close parallel relation.

27 A method for using a knock-down crate to transport produce from a loading location to an unloading location, the method comprising the steps of:

(a) providing a knock-down crate having:

(i) a base having a length, a breadth, and an upper surface that includes an elongated recess, said base including a pair of forklift tine engagement regions extending parallel to said length such that a major part of said recess lies between said forklift tine engagement regions, each of said forklift tine engagement regions configured for receiving tines of a forklift mechanism, and

(ii) four sides deployable in a crate configuration wherein a plurality of said sides are engaged with said base and each other to form a four-sided crate, said four sides being further deployable in a knock-down configuration wherein said four sides are received substantially within said elongated recess;

(b) deploying said crate in said crate configuration;

(c) loading said crate at the loading location with produce, at least part of the produce lying within said elongated recess;

(d) transporting the produce in said crate to the unloading location;

(e) unloading the produce from said crate; and

(f) deploying said crate in said knock-down configuration with said plurality of sides located substantially within said elongated recess for transport to a next loading location.

IX. APPENDIX OF EVIDENCE

1. Definition of the word “between” from “Merriam-Webster’s Online Dictionary” (www.m-w.com) as cited in Applicant’s Response After Final filed November 6, 2006:

Main Entry: **1be·tween**

Pronunciation: bi-'twEn, bE-

Function: *preposition*

Etymology: Middle English *betwene*, preposition & adverb, from Old English *betwEonum*, from *be-* + *-twEonum* (dative plural) (akin to Gothic *tweihnai* two each); akin to Old English *twA* two

1 a : by the common action of : jointly engaging <shared the work *between* the two of them> <talks *between* the three -- *Time*> **b :** in common to : shared by <divided *between* his four grandchildren>

2 a : in the time, space, or interval that separates **b :** in intermediate relation to

3 a : from one to another of <air service *between* Miami and Chicago> **b :** serving to connect or unite in a relationship (as difference, likeness, or proportion) <a one-to-one correspondence *between* sets> **c :** setting apart <the line *between* fact and fancy>

4 a : in preference for one or the other of <had no difficulty deciding *between* the two> **b :** in point of comparison of <not much to choose *between* the two coats>

5 : in confidence restricted to <a secret *between* you and me>

6 : taking together the combined effect of <*between* work and family life, they have no time for hobbies>

2. Definition of the word “between” from “The Cambridge Dictionary of American English”, (www.dictionary.cambridge.org), as cited in Applicant’s Response After Final filed November 6, 2006:

between, in between (SPACE)

preposition, adverb

in or into the space that separates two places, people, or objects.

We live halfway between Toronto and Montreal.

She squeezed in between the parked cars.

If something is between two amounts, it is greater than the first amount but smaller than the second: *She weighs between 55 and 60 pounds.*

X. APPENDIX OF RELATED PROCEEDINGS

NONE